



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/161622

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 08, 2015, at Racine, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dean Landvatter, Fraud Coordinator
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of [REDACTED]. She moved to [REDACTED] in May 2013. She moved to a different address in [REDACTED], sometime around February 2014. (Testimony of Petitioner)
2. When Petitioner moved from Wisconsin, she had her mail forwarded to [REDACTED]. (Testimony of Petitioner)

3. The Petitioner did not notify Racine County of her move to [REDACTED] (Testimony of Petitioner)
4. On April 2, 2014, Racine County (the agency) sent the Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], indicating that she had been overpaid \$2,997.00 in FoodShare benefits between August 1, 2012 and July 31, 2013. The notice was sent to Petitioner at her former address in Racine. (Exhibit 3, attachment A)
5. Also on April 2, 2014, the agency sent Petitioner a repayment agreement. This was sent to the Racine address. (Exhibit 3, attachment B)
6. On May 2, 2014, June 3, 2014, and July 2, 2014, the agency sent the Petitioner dunning notices (reminders) regarding the debt. These were sent to the Racine address. (Exhibit 3, attachments C, D and E)
7. Racine County did not receive any returned mail. (Testimony of Mr. Landvatter)
8. On August 15, 2014, the Public Assistance Collections Unit (PACU) sent the Petitioner a notice advising her that her state tax refunds would be intercepted to satisfy the FoodShare overpayment. This was also sent to the Petitioner at the Racine address. (Exhibit 3, attachment F)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 31, 2014.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application, the reduction of benefits, or as in this case, recoupment/recovery of an overpayment of benefits.

The agency sent the Petitioner the overpayment notices to her last known address in Racine. Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.W.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613.

It is reasonable to conclude that the Petitioner received the April 2014 notice of FoodShare overissuance, because she testified that she received a notice of overpayment in early 2014, because Petitioner had her mail forwarded to her in [REDACTED] and because Racine County did not receive any returned mail.

The Petitioner's appeal was filed seven months after the date she was sent the overpayment notice, well past the 90-day appeal deadline. Thus, it was untimely, and no jurisdiction exists for considering the merits of her appeal of the underlying FoodShare overpayment.

With regard to the tax intercept, a party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the notice was August 15, 2014. As such, Petitioner needed to file her appeal by September 15, 2014. Her appeal was not filed until October 31, 2014. As such, her appeal of the tax intercept is also untimely, so there is no jurisdiction to hear the merits of her appeal of the tax intercept.

Even if jurisdiction did exist, I would find that the agency properly instituted the tax intercept.

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FoodShare, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

Here the agency properly issued the notice of tax intercept, a repayment agreement and three dunning notices. PACU issued to the Petitioner the notice of tax intercept. The Petitioner does not make a claim of mistaken identity, nor does she dispute the fact that she has not made any payments towards the debt. Thus, the tax intercept was properly instituted.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

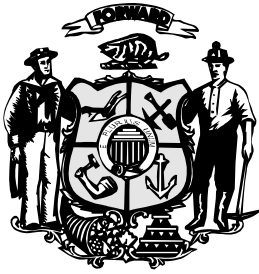
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of January, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 16, 2015.

Racine County Department of Human Services
Public Assistance Collection Unit